REMARKS

Claims 1-150 are in the application.

Claims 145-150 are new.

Applicant has previously elected **Group I**, claims 1-38, 58-95, and 144, which as asserted by applicant include claims 53-57 and 127-143, **with traverse** to prosecute together therewith Groups II (claims 39-52), III (claims 96-109), and IV (claims 110-126). No response to Applicant's traversal is provided in the Office Action, and Applicant reiterates its demand for examination of all claims.

No action has been taken in this case with respect to claims 53-57 and 127-143, which are neither restricted nor rejected. Examination thereof is respectfully requested.

Claim 142 is believed to be part of elected Group I because it is similar to claims 76 plus 77 in scope. The prior statement relating this to the elected group was in error.

Claims 1-38, 58-95 and 144 are rejected under 35 U.S.C. § 103 as being obvious over Lipner et al. (US 5,745,573). The Examiner admits that Lipner et al. do not refer to the formation of a trust, but the Examiner asserts that "it would have been obvious to one of ordinary skill in the art to adapt the teachings of Lipner to obtain the presently claimed invention, and generally in order to limit access to records to only certain trusted people." In fact, this analysis misses the point of the present claims, that is, in arranging a relationship to guard the interests in property, it is not necessary to rely purely on a trustworthy relationship, and applicant has proposed an alternative. Therefore, in a sense, the present invention expresses an invention that is diametrically opposite to the "obvious" conclusion drawn by the Examiner. The Examiner concludes that in order to resolve the issue of enforcing a set of rules which are themselves not defined by law, one

naturally selects a "trusted" person. The implication is that an untrusted person would not achieve the same or as good a result. On the other hand, applicant has conceived that, by invoking the specific trust laws of a jurisdiction, it is possible to bypass the question as to whether the "trustee" is truly trustworthy. Thus, in the case of a contractual relationship, a Court cannot simply substitute a party to the contract, and there may be cases where a party becomes incompetent to enter into a new contract (e.g., death) or would be substantially prejudiced by a novation or creation of a new contract. On the other hand, in the case of a trust, the Court can appoint a substitute trustee, preserving the trust, even in instances of malfeasance, death, or withdrawal of the trustee. This is a particular difference between a contractual and trust solution, and leads to substantially different results in various circumstances.

Therefore, the Examiner's assertion that the use of a "trusted" person is obvious, makes use of an untrusted or arbitrary person for the same task non-obvious. In this case, since the claims define a system and method in which the trustee may be effectively limited in abusing its discretion, the result is quite different than, for example, the system according to Lipner et al., the data recovery center necessarily has access to the stored secrets. This precludes a rule within the trust which precludes access by the trustee, and thus the trust agreement would not be respected in that case.

Each of the independent claims requires that a particular set of rights be placed IN TRUST, meaning within the context of a legally defined structure in which a grantor (or settlor) places an interest in a valuable asset as res or corpus, to be administered by a trustee, on behalf of a beneficiary. In accordance with trust law, the trustee controls the legal right to the corpus, and generally has discretion, as defined and limited by the trust,

to act in that capacity, including the right to commence, defend, and maintain suits in his own name and capacity. He has a fiduciary responsibility to the beneficiary, and in cases of misconduct or the like, may be replaced in the capacity of trustee by a Court.

The trustee, indeed, though endowed with a fiduciary responsibility, need not be "trusted" with respect to certain aspects. For example, a trade secret or the like may be placed in trust, and the exact nature of that secret remain unknown to the trustee.

The Examiner has presented no prior art which discloses a trust of any type, which meets all of the claim limitations, even to the extent that an escrow is within the scope of a trust, an issue which does not require resolution at this juncture. Thus, it is respectfully submitted that, in accordance with claim 1, none of the art of record or known prior art discloses a method or structure in which information is transferred into, and subject to the rules of, a trust, which automatically limits access to information records by referencing a set of access rules for the record.

With respect to claim 3, the Examiner states that Lipner discloses an anonymous accounting. In fact, Lipner Col. 22, lines 10-20, cited by the Examiner, discloses confidential communications, which are decidedly non-anonymous.

With respect to claim 12, Lipner et al. do not teach or suggest implications for medical records and patient identities.

With respect to claims 18-20, Lipner et al. do not teach or suggest a remotely sensed transaction or financial implications of any accounting.

Per claims 21-22, Lipner et al. do not teach or suggest that an accounting occurs on use of a decryption key. That is, an encrypted record is supplied to the decrypting

user, and accounted at that time. There appears to be no record made when the decrypting user decrypts the received information, which is at that time in his possession.

With respect to claims 23-38, applicant has discussed above that the key escrow of Lipner et al. does not meet the present claims. Thus, while Lipner et al. state that the key (or other confidential information, see Abstract) is held in escrow, it is not clear that any trust laws are invoked or relevant to the transaction. Creation of a trust requires that the grantor/settlor express the intent to create the trust, and there is no suggestion that this is the case. In some jurisdictions, a formal trust agreement specifying creation of a trust and enumerating various powers is required. Based on the information provided, there is simply insufficient teaching or suggestion of the presently claimed invention.

Thus, the present invention is distinguished from a typical information escrow, in that the escrow agent gains no legal interest in the information, while in a trust the trustee gains such an interest.

It is therefore respectfully submitted that the present invention is patentable.

Since there is no outstanding rejection of claims 53-57 and 127-143, it is respectfully submitted that no final action may be issued in response hereto. However, applicant desires to conclude prosecution, and invites a telephone interview with the Examiner and her supervisor prior to issuance of a subsequent Office Action, seeking to efficiently resolve the outstanding issues and advance prosecution.

Respectfully submitted,

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